IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 313 of 1981

For Approval and Signature:

HON'BLE MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

INDO TEXTILES MANUFACTURING CO

Versus

ARVINDBHAI SOLE PROPRI. OF ARVIND BOBBIN WORKS

Appearance:

1. First Appeal No. 313 of 1981

MR JC VYAS for Appellant No.

NOTICE SERVED for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE A.L.DAVE

Date of decision: 27/10/2004

ORAL JUDGEMENT

1. The appellants - original plaintiffs had preferred original Civil Suit No.3603 of 1976 before the

City Civil Court at Ahmedabad for recovery of an amount of Rs.28,000/- from the respondent. According to plaintiffs, the amount was paid to the defendant partly in cash and partly by cheques. For repayment of which the defendant issued four cheques, all of which were bounced. The plaintiffs, therefore, issued a legal notice to the defendant, who, in turn, paid Rs.10,000/by way of cash and the plaintiffs, therefore, were required to file suit for recovery of Rs.25,000/- being principal amount, Rs.2965/- being interest amount and Rs.35/- being notice charges.

2. The Trial Court by judgment and decree dated 12th August,1980 dismissed the said suit which has given rise to the present appeal.

3. The Trial Court found that the plaintiffs were able to prove their case of having advanced an amount of Rs.10,000/- on 10th March,1975 and an amount of Rs.15,000/- on 5th March,1975 to the defendant. The Trial Court also held that plaintiffs were entitled to an amount of Rs.2965/- by way of interest. The Trial Court, however, held that the plaintiffs were not entitled to Rs.35/- being notice charges and as such, held that the plaintiffs were entitled to recover an amount of Rs.27,965/- from the defendant.

4. However, the Trial Court also found that the plaintiffs were not entitled to a decree for the said amount on the ground that though the firm was registered, names of the persons suing did not appear in the Registrar of Firms, namely, plaintiff nos.3 and 4.

5. Learned Advocate Mr.Piyush Patel appearing for learned Advocate Mr.J.C.Vyas for the appellants submits that the Trial Court has committed an error in not appreciating the fact that a change in the constitution in the firm does not bring about a new partnership and the partners carried on business in the name of the firm which name is registered in the Register of Partnership Firm maintained by the Registrar of Firms. He also submitted that the change in the constitution of the firm was sought to be entered into the register of firms by making a requisite application to the Registrar of Firms but, the same was not effected to and, therefore, no defect could have been found in the plaintiffs' case and the suit ought to have been decreed.

6. Though notice of admission has been served, nobody appears for the respondent.

7. This Court has given anxious consideration to the contentions raised before it by the learned Advocate. It is not possible to accept the contentions raised by the learned Advocate for the appellants in light of the provisions contained in Indian Partnership Act. It is clear that there are two requirements for maintainability of a suit; first being that the firm must be registered and second being that the names of the persons suing must appear in the register of firms. The second condition in the preset case is undisputedly not satisfied as the names of plaintiff nos.3 and 4 did not appear in the register of firms at the time when the suit was filed. Learned Trial Court Judge relied on the decision of this Court in the case of Bharat Sarvodaya Mills Vs. Mohatta Brothers as reported in X GLR 557, wherein, the same view was taken. The said matter was carried before the Apex Court and the Apex Court by its judgment reported in AIR 1976 SC 1703 did not disturb the finding of the Gujarat High Court by observing, "in view of this conclusion of ours, it is not necessary to go into the legal question as to what should be the proper construction of Section 69 of the Indian Partnership Act." Thus, fact remains that the view taken by this Court was not disturbed.

8. Apart from this, even plain reading of Subsection 2 of Section 69 of the Indian Partnership Act also makes it clear that unless the twin requirements are satisfied at the time of institution of the suit, the suit to enforce a right arising from a contract cannot be instituted in any Court and as such, the proper import would be to see the constitution of the firm at the time of the institution of the suit and subsequent change would be of no significance. It has also to be noted that by change in partnership, though the firm continues, the constitution of the firm changes. Differently put, the partnership does not remain the same though the firm remains.

9. In view of the above factual and legal situation, in the opinion of this Court, no interference can be made in the judgment and decree impugned herein. The appeal must fail and is, therefore, dismissed. There shall be no order as to costs.

(A.L.Dave,J.)

(vipul)